

AMENDED IN ASSEMBLY APRIL 29, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

## ASSEMBLY BILL

No. 458

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**Introduced by Assembly Member Cook  
(Coauthor: Assembly Member Tom Berryhill)**

February 24, 2009

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An act to amend Section ~~1324~~ of, and to repeal Section ~~1324.1~~ of, ~~1324.1~~ of the Penal Code, relating to criminal procedure.

### LEGISLATIVE COUNSEL'S DIGEST

AB 458, as amended, Cook. Criminal procedure: witness testimony.

~~Existing law provides that in any felony proceeding or in any investigation or proceeding before a grand jury for any felony offense, if a person refuses to answer a question or produce evidence of any other kind on the ground that he or she may be incriminated thereby, there is a procedure for the court to compel the testimony or production of evidence.~~

~~This bill would extend these provisions to any criminal proceeding.~~

Existing law provides that in any misdemeanor proceeding in any court, if a person refuses to answer a question or produce evidence of any other kind on the ground that he may be incriminated thereby, the person may agree in writing to testify voluntarily, *subject to court approval of the written agreement*, as specified.

~~This bill would repeal those provisions~~ *instead provide a procedure for the district attorney to request the court, and for the court to hold a hearing, to compel that person to answer the question or produce the evidence, as specified.*

Vote: majority. Appropriation: no. Fiscal committee: ~~yes~~-no.  
State-mandated local program: ~~yes~~-no.

*The people of the State of California do enact as follows:*

1     *SECTION 1. Section 1324.1 of the Penal Code is amended to*  
2     *read:*

3     1324.1. In any misdemeanor proceeding in any court, if a  
4     person refuses to answer a question or produce evidence of any  
5     other kind on the ground that he *or she* may be incriminated  
6     thereby, ~~the person may agree in writing with the district attorney~~  
7     ~~of the county, or the prosecuting attorney of a city, as the case may~~  
8     ~~be, to testify voluntarily pursuant to this section. Upon written~~  
9     ~~request of such district attorney, or prosecuting attorney, the court~~  
10    ~~having jurisdiction of the proceeding shall approve such written~~  
11    ~~agreement, unless the court finds that to do so would be clearly~~  
12    ~~contrary to the public interest. If, after court approval of such~~  
13    ~~agreement, and if, but for this section, the person would have been~~  
14    ~~privileged to withhold the answer given or the evidence produced~~  
15    ~~by him, that person shall not be prosecuted or subjected to penalty~~  
16    ~~or forfeiture for or on account of any fact or act concerning which,~~  
17    ~~in accordance with such agreement, he answered or produced~~  
18    ~~evidence, but he may, nevertheless, be prosecuted or subjected to~~  
19    ~~penalty or forfeiture for any perjury, false swearing or contempt~~  
20    ~~committed in answering or in producing evidence in accordance~~  
21    ~~with such agreement. If such person fails to give any answer or to~~  
22    ~~produce any evidence in accordance with such agreement, that~~  
23    ~~person shall be prosecuted or subjected to penalty or forfeiture in~~  
24    ~~the same manner and to the same extent as he would be prosecuted~~  
25    ~~or subjected to penalty or forfeiture but for this section and if the~~  
26    ~~district attorney of the county or any other prosecuting agency in~~  
27    ~~writing requests the court, in and for that county, to order that~~  
28    ~~person to answer the question or produce the evidence, a judge~~  
29    ~~shall set a time for hearing and order the person to appear before~~  
30    ~~the court and show cause, if any, why the question should not be~~  
31    ~~answered or the evidence produced. The court shall order the~~  
32    ~~question answered or the evidence produced unless it finds that~~  
33    ~~to do so would be clearly contrary to the public interest, or could~~  
34    ~~subject the witness to a criminal prosecution in another~~  
35    ~~jurisdiction, and that person shall comply with the order. After~~  
36    ~~complying, and if, but for this section, he or she would have been~~  
37    ~~privileged to withhold the answer given or the evidence produced~~  
38    ~~by him or her, no testimony or other information compelled under~~

1 *the order or any information directly or indirectly derived from*  
2 *the testimony or other information may be used against the witness*  
3 *in any criminal case. But he or she may nevertheless be prosecuted*  
4 *or subjected to penalty or forfeiture for any perjury, false swearing*  
5 *or contempt committed in answering, or failing to answer, or in*  
6 *producing, or failing to produce, evidence in accordance with the*  
7 *order.*

8 ~~SECTION 1. Section 1324 of the Penal Code is amended to~~  
9 ~~read:~~

10 ~~1324. In any criminal proceeding or in any investigation or~~  
11 ~~proceeding before a grand jury for any criminal offense if a person~~  
12 ~~refuses to answer a question or produce evidence of any other kind~~  
13 ~~on the ground that he or she may be incriminated thereby, and if~~  
14 ~~the district attorney of the county or any other prosecuting agency~~  
15 ~~in writing requests the court, in and for that county, to order that~~  
16 ~~person to answer the question or produce the evidence, a judge~~  
17 ~~shall set a time for hearing and order the person to appear before~~  
18 ~~the court and show cause, if any, why the question should not be~~  
19 ~~answered or the evidence produced, and the court shall order the~~  
20 ~~question answered or the evidence produced unless it finds that to~~  
21 ~~do so would be clearly contrary to the public interest, or could~~  
22 ~~subject the witness to a criminal prosecution in another jurisdiction,~~  
23 ~~and that person shall comply with the order. After complying, and~~  
24 ~~if, but for this section, he or she would have been privileged to~~  
25 ~~withhold the answer given or the evidence produced by him or~~  
26 ~~her, no testimony or other information compelled under the order~~  
27 ~~or any information directly or indirectly derived from the testimony~~  
28 ~~or other information may be used against the witness in any~~  
29 ~~criminal case. But he or she may nevertheless be prosecuted or~~  
30 ~~subjected to penalty or forfeiture for any perjury, false swearing~~  
31 ~~or contempt committed in answering, or failing to answer, or in~~  
32 ~~producing, or failing to produce, evidence in accordance with the~~  
33 ~~order. Nothing in this section shall prohibit the district attorney or~~  
34 ~~any other prosecuting agency from requesting an order granting~~  
35 ~~use immunity or transactional immunity to a witness compelled~~  
36 ~~to give testimony or produce evidence.~~

37 ~~SEC. 2. Section 1324.1 of the Penal Code is repealed.~~